

### REMARKS/ARGUMENTS

Favorable reconsideration of this application, in view of the present amendment and in light of the following discussion, is respectfully requested.

Claims 1-16 are pending. In the present amendment, Claim 1 is currently amended and new Claims 14-16 are added. Support for the present amendment can be found in the original specification, for example, in Figure 1, and in original Claims 1, 4, and 5. Thus, it is respectfully submitted that no new matter is added.

In the outstanding Office Action, Claims 3-5, 8, 9, and 11-13 were withdrawn due to a constructive restriction; and Claims 1, 2, 6, 7, and 10 were rejected under 35 U.S.C. § 102(b) as anticipated by Siska et al. (U.S. Patent No. 6,466,681, hereinafter “Siska”).

First, Applicant wishes to thank Patent Examiner Robinson for the courtesy of an interview granted to Applicant’s representatives on March 3, 2009, at which time the outstanding issues in this case were discussed. Arguments similar to the ones developed hereinafter were presented and Examiner Robinson indicated that in light of the arguments, he would reconsider the outstanding grounds for rejection upon formal submission of a response.

Turning now to the rejection under 35 U.S.C. § 102(b), Applicant respectfully requests reconsideration of this rejection and traverses this rejection, as discussed below.

Amended Claim 1 recites:

A headphone apparatus, comprising:

a baffle portion formed to surround a space except a front opening portion of a driver unit, such that the baffle portion does not contact the front opening portion of the driver unit.

The baffle portion of the headphone apparatus in amended Claim 1 is located in a space within the headphone apparatus, except in a front opening portion of a driver unit. As

seen in Figure 1 of the original specification, the baffle portion does not contact a front opening portion of the driver unit. It is respectfully submitted that the cited reference does not disclose or suggest every feature recited in amended Claim 1.

As discussed in the interview, in Siska, a sound attenuating ear cup foam barrier 15 (cited in the Office Action as corresponding to the claimed baffle portion) is positioned next to a speaker 16 (cited in the Office Action as corresponding to the claimed driver unit). The foam barrier 15 ***directly contacts and completely surrounds*** a front opening portion of the speaker 16, as seen in Figure 4A of Siska. Further, although Figure 4B of Siska shows the speaker 16 not covered by the foam barrier 15, Siska states that “in Fig. 4B, the ear cup plate, membrane, and ***foam barrier have been omitted.***”<sup>1</sup>

However, it is respectfully submitted that Siska does not disclose or suggest “a baffle portion formed to surround a space except a front opening portion of a driver unit, such that the baffle portion does not contact the front opening portion of the driver unit,” as recited in amended Claim 1.

Instead, there is a difference in arrangement of the baffle portion recited in Claim 1 and the foam barrier 15 recited in Siska. The foam barrier 15 in Siska contacts and surrounds the speaker 16, as seen in Figure 4A, including the space in front of the speaker 16. Further, Figure 2 of Siska, which the Office Action relies on to show an opening in the baffle portion 15, does not show the opening passing all the way through to the speaker 16, as evidenced by Figure 4A of Siska. Thus, it is respectfully submitted that the cited reference does not disclose or suggest every feature recited in amended Claim 1. Accordingly, it is respectfully requested that the rejections of Claim 1, and all claims dependent thereon, as anticipated by or unpatentable over Siska be withdrawn.

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<sup>1</sup> See Siska, at col. 7, lines 12-14.

In response to the constructive restriction of Claims 3-5, 8, 9, and 11-13 in the Office Action, Applicant respectfully traverses the restriction. The Office Action states in section 3 on page 2 that “Newly submitted claims 11-13 are directed to an invention that is independent or distinct from the invention originally claimed...” However, as discussed in the interview, the back housing portion of Claim 11 was disclosed in original Claim 1 and was also positively recited in original Claim 3. Thus, the back housing portion of Claim 11 was part of the originally presented invention. Accordingly, it is respectfully requested that the constructive election be withdrawn, and that a full examination on the merits of Claims 3-5, 8, 9, and 11-13 be conducted.

Claims 11-13 were added by the amendment filed on November 10, 2008. Support for new Claims 11-13 can be found in the original specification, for example, at page 7, lines 17-19, at page 8, lines 11-21, and in original Claims 1, 6, and 10. Thus, it is respectfully submitted that no new matter is added.

Claim 11 recites that “the back housing portion is formed of an air-permeable porous material.” The back housing in Siska consists of a shell 18. Siska does not disclose or suggest that the shell 18 is made of an air-permeable porous material. Thus, it is respectfully submitted that Claim 11 patentably defines over the cited reference.

Regarding the rejection of Claim 3 as anticipated by Siska in the Office Action of August 8, 2008, it is noted that Claim 3 is dependent on Claim 11, and thus is believed to be patentable for at least the reasons discussed above with respect to Claim 11. Accordingly, it is respectfully submitted that Claim 3 patentably defines over the cited reference.

Regarding the rejections of Claims 4, 5, 8, and 9 as unpatentable over Siska in the Office Action of August 8, 2008, it is noted that Claims 4, 5, 8, and 9 are dependent on Claim 11, and are thus believed to be patentable for at least the reasons discussed above with respect to Claim 11. Furthermore, it is respectfully submitted that the Office Action of August 8,

2008 does not demonstrate why one of ordinary skill in the art, at the time of Applicant's invention, would have developed a design choice comprising Applicant's chosen materials. The materials in claims 4, 5, 8, and 9 comprising the air-permeable porous material are not inherent in the back housing 18 of Siska because Siska does not "make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill."<sup>2</sup> Further, it is respectfully submitted that taking official notice regarding the materials recited in Claims 4, 5, 8, and 9 would not be proper as MPEP § 2144.03 states that "[o]fficial notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known." Accordingly, it is respectfully submitted that Claims 4, 5, 8, and 9 patentably define over the cited reference.

New Claims 14-16 are added by the present amendment. Support for new Claims 14-16 can be found in the original specification, for example, in original Claims 1, 4, and 5. Thus, it is respectfully submitted that no new matter is added. New Claims 14-16 depend on Claim 1. Thus, it is respectfully submitted that new Claims 14-16 patentably define over the cited reference for at least the reasons stated above with respect to Claim 1.

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<sup>2</sup> See MPEP § 2112, citing In re Robertson, 169 F.3d 743, 745 (Fed. Cir. 1999).

Consequently, in view of the present amendment, no further issues are believed to be outstanding in the present application, and the present application is believed to be in condition for formal allowance. A Notice of Allowance is earnestly solicited.

Respectfully submitted,

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A handwritten signature in black ink, appearing to read "Colin B. Harris", is written over a horizontal line.

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